

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION

UNITED STATES OF AMERICA

§

VS.

§

CAUSE NO. 2:22-184

ELDEN BRANNAN

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§

**FIRST MOTIONS IN LIMINE**

**#1: A MOTION TO EXCISE LANGUAGE FROM THE INDICTMENT**

Mr. Brannan now moves in limine to excise the following portion of the indictment: “to wit: one (1) homemade pipe bomb, consisting of a one inch diameter metal pipe approximately six inches in length, wrapped in white tape and a fuse cord protruding out of one end.” Title 26, United States Code, section 5861(d) prohibits receiving or possessing a firearm which is not registered in the National Firearms Registration and Transfer Record. The term “firearm” is defined in 26 U.S.C. § 5845(a) and includes a “destructive device.” The term “destructive device” is subsequently defined in § 5845(f); however, the term “pipe bomb” or “homemade pipe bomb” is not included in the definition of a destructive device.

“The Sixth Amendment requires that an indictment (1) enumerate each *prima facie* element of the charged offense; (2) fairly inform the defendant of the charges filed against him; and (3) provide the defendant with a double jeopardy defense against future prosecutions.” *United States v. Gaytan*, 74 F.3d 545, 551 (5th Cir. 1996) (citation omitted); *see also generally* Fed. R. Crim. P. 7. The additional language cited above does not constitute an element of the offense. The language should be stricken as surplusage, *see* Fed. R. Crim. P. 7(d), and because it could mislead the jury as to what the government is required to prove.

**#2: A MOTION TO LIMIT BACKGROUND INVESTIGATION TESTIMONY**

The government and its witnesses may attempt to elicit evidence or to testify about how they came to be in Mr. Brannan's family's residence or about how they found the item in question. The government should be prohibited from delving too deep into any such testimony as it would violate the Confrontation Clause and Federal Rule of Evidence 404(b). *See United States v. Hamann*, 33 F.4th 759, 770 (5th Cir. 2022) ("We have also repeatedly warned the government against '[b]ackdooring highly inculpatory hearsay via an explaining-the-investigation rationale.'") (quoting *United States v. Sharp*, 6 F.4th 573, 582 (5th Cir. 2021), cert. denied, 142 S. Ct. 1124 (2022))). Mr. Brannan suggests that, for context, the government be allowed to elicit from its witnesses that officers were called to the residence on an unrelated matter and during routine investigation found the item in question.

WHEREFORE, PREMISES CONSIDERED, Mr. Brannan reserves the right to supplement this motion. Mr. Brannan requests that the Court grant his motions in limine.

Respectfully submitted,

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Federal Public Defender  
Southern District of Texas No. 3233  
Texas State Bar No. 14003750

By /s/ Rachel Elizabeth Braver  
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**CERTIFICATE OF SERVICE**

I certify that on September 30, 2022 a copy of this document was served via CM/ECF on Assistant United States Attorney Joel Dunn, 800 N. Shoreline, Suite 500, Corpus Christi, Texas 78401.

/s/ Rachel Elizabeth Braver  
RACHEL ELIZABETH BRAVER

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**#1: A MOTION TO EXCISE LANGUAGE FROM THE INDICTMENT**

Defendant's Motion in Limine #1

is hereby

GRANTED DENIED.

**#2: A MOTION TO LIMIT BACKGROUND INVESTIGATION TESTIMONY**

Defendant's Motion in Limine #2

is hereby

GRANTED DENIED.

SO ORDERED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2022.

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Hon. David S. Morales  
United States District Judge